

Operation Richmond

Operation Richmond was an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) into allegations of corrupt conduct relating to the negotiation of enterprise bargaining agreements (EBAs) for the Country Fire Authority (CFA) and Metropolitan Fire Brigade (MFB) between 2016 and 2019 and the establishment of Fire Rescue Victoria (FRV) in 2019.



Scope

IBAC commenced Operation Richmond in November 2018 after it received information and complaints alleging that the Secretary of the United Firefighters Union (UFU), Mr Peter Marshall, blackmailed or otherwise compromised the then-Premier, Mr Daniel Andrews, to change his position on the CFA EBA.

IBAC expanded the scope of Operation Richmond, which included investigating allegations relating to the negotiation of the former MFB EBA and the establishment of FRV.

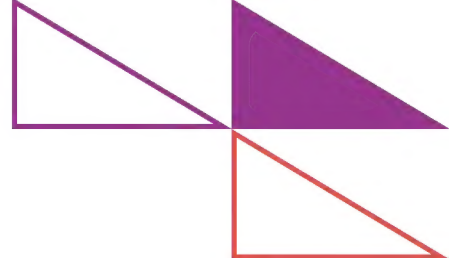
IBAC concluded its active investigation in 2022.



Key findings

IBAC did not find evidence for the alleged blackmail. IBAC also did not establish that the conduct investigated met all required elements to make findings of corrupt conduct, which is defined in the *Independent Broad-based Anti-corruption Commission Act 2011* and requires that the conduct would constitute a relevant criminal offence.

However, IBAC found serious and concerning conduct by senior public officers, including ministers, members of Parliament and public servants, relating to the negotiation of the CFA EBA, the MFB EBA and the establishment of FRV, which increased the risk of corrupt conduct. This included actions contrary to policy, procedure and codes of conduct, deliberate attempts to conceal and mislead, and the misuse of information.



Negotiations of the CFA EBA (March to April 2016)

IBAC found that, in late March 2016, Mr Andrews authorised the Special Minister of State, Mr Gavin Jennings, to commence negotiations directly with the UFU for the proposed CFA EBA amid an ongoing dispute over the terms of the EBA. This happened without the knowledge or involvement of the CFA, the Minister for Emergency Services, Ms Jane Garrett, or other parties (the ‘undisclosed negotiations’).

The Department of Premier and Cabinet (DPC) Deputy Secretary, Mr Tony Bates PSM, was instructed by the DPC Secretary, Mr Chris Eccles AO, to also assist Minister Jennings.

The undisclosed negotiations between Minister Jennings, Mr Bates and Mr Marshall happened over four days in early April 2016, during which the parties made a deal on acceptable terms.

Following the undisclosed negotiations, a document containing the terms agreed to by the parties was presented to Cabinet and the public as a ‘UFU proposal’. The Minister for Emergency Services, the fire agencies and other relevant members of government, including Cabinet members, were not told of the negotiations or the origin of the proposed EBA.

Finalisation of the CFA EBA (May to August 2016)

In May 2016, conciliation for the CFA EBA took place at the Fair Work Commission (FWC). During the conciliation process, Minister Jennings and Mr Bates continued to mislead their colleagues at the CFA and Industrial Relations Victoria by failing to make known the undisclosed negotiations and the deal reached with Mr Marshall.

While Minister Jennings did not attend the conciliation hearings, he did communicate with the presiding Fair Work Commissioner, which he also failed to disclose to the CFA or Minister Garrett.

Following the FWC proceedings, the state government pushed ahead with the draft CFA EBA and removed or otherwise managed opposition to its implementation.

Minister Garrett resigned in June 2016 prompted by her refusal to sign an EBA which she considered unacceptable. The CFA Board, who also refused to approve the proposed EBA, was dismissed, and a new Board was appointed through an opaque and non-competitive process.

In August 2016, the new CFA Board approved the draft EBA, however it did not advance due to changes to the *Fair Work Act 2009* (Cth) (FW Act) that needed to be considered by the FWC before an EBA could be approved.

Negotiations and finalisation of the MFB EBA (June 2016 to February 2019)

In mid-2016, efforts shifted towards negotiations for the MFB EBA, which was intended to mirror the CFA EBA.

Mr Marshall continued to pressure the government and expected the terms of the CFA EBA to be carried across to the MFB EBA. IBAC found that, like the CFA, the MFB was unaware of Minister Jennings’ and Mr Bates’ undisclosed negotiations with Mr Marshall and the undisclosed deal reached with Mr Marshall about acceptable terms to be included in the EBA.

When Mr Bates or others attempted to make changes to the proposed MFB EBA to address the MFB’s concerns, Mr Marshall referred to his deal and refused to change his position on the EBA to address the MFB’s concerns.

In their efforts to settle the EBA, from March 2017 to January 2018 the government filled four vacant MFB Board positions with new members who understood the government’s preferred position on the MFB EBA.

In January 2018, the MFB Board approved the MFB EBA followed by the FWC in February 2019. Upon the establishment of FRV, the EBA that applied to the MFB was transferred to FRV under the FW Act.

Establishment of FRV (2017 to 2019)

During the investigation, IBAC obtained evidence of possible corrupt conduct relating to the passage of the Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019 (FSLAR Bill 2019) and the change in leadership at the MFB and FRV.

The FSLAR Bill 2019 provided for two main reforms that Mr Marshall had long been a strong advocate for: the restructuring of the fire services, and the establishment of presumptive rights for eligible firefighters diagnosed with certain firefighting-related cancers to receive compensation.

IBAC's investigation established that between 2018 and 2019, Mr Marshall was provided with privileged access to the then-Emergency Services Minister, Ms Lisa Neville. IBAC found Minister Neville's inappropriate stakeholder management of Mr Marshall enabled his privileged access to her and, paired with a lack of transparency, created a risk of corrupt conduct, as Mr Marshall sought to influence the selection of the FRV Commissioner.

In addition, IBAC found that during this period an MFB Board member, Mr Greg Sword AM, shared confidential information with Mr Marshall in 2019 in breach of his professional obligations.



Corruption risks

IBAC's investigation identified a range of conduct which has the potential to enable, facilitate or result in corrupt conduct. This includes corruption risks posed by improper influence, failures in ministerial conduct, failures by senior public servants to act impartially and the politicisation of appointment processes for public sector boards.

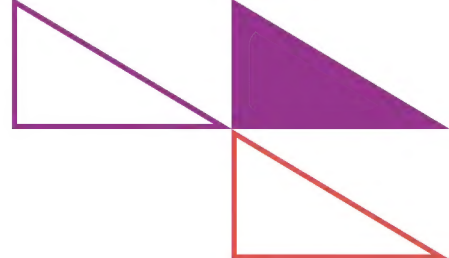
Improper influence

Mr Marshall had privileged access to senior members of government including during negotiations for the CFA and MFB EBAs between 2016 and 2019 and the establishment of FRV in 2019. These interactions were frequent, demanding and often lacked transparency, which increased the risk of decision makers and their staff being improperly influenced by Mr Marshall.

The lack of transparency surrounding decision making regarding the fire services also contributed to perceptions in the community that ministers were acting for political purposes, rather than in the public interest.

While access to decision makers, including by special interest groups, is an important democratic right, privileged access to decision makers can divert decision making away from the public interest towards the interests of specific groups or individuals.

Where a public officer is influenced in a way that interferes with or compromises the honest performance of their duties and functions, it has the potential to enable, facilitate or result in corrupt conduct.



Ministerial conduct

Contrary to the *Code of Conduct for Ministers and Parliamentary Secretaries* (Ministerial Code) and the *Public Sector Industrial Relations Policies* (PSIRP), the Premier authorised Minister Jennings to undertake EBA negotiations with the UFU, which occurred to the exclusion of the responsible minister, department and agencies.

By not disclosing Minister Jennings' negotiations with the UFU to the responsible minister, the relevant agencies, Parliament and the public meant that no one could properly hold the government to account for the way in which the fire services EBAs were negotiated and finalised.

Minister Jennings' failure to disclose his communications with the presiding Fair Work Commissioner during FWC conciliation proceedings in 2016 was also contrary to his obligations under the Ministerial Code, and obligations for good faith bargaining under the PSIRP.

Ministers play a central role in shaping the ethical culture of government – they ultimately set the tone for integrity in government and, more broadly, across the public sector.

When ministers act contrary to policies and procedures, they undermine the critical role they play as stewards of integrity and good governance, and can create an environment which enables, facilitates or results in corrupt conduct.

Public servant impartiality and independence

Mr Eccles and Mr Bates were involved in the undisclosed negotiations for the 2016 CFA EBA and provided subsequent advice on the 'UFU proposal' without disclosing the original negotiations to key stakeholders and decision makers, including the responsible minister. In doing so, they did not act as impartial advisors and implementers of government policy.

Pressure was also placed on public servants to provide advice to ministers that would align more closely with the government's aims, rather than their independent opinion.

When public servants do not fulfil their responsibility to provide balanced and informed information to ministers, they risk decisions or actions being improperly influenced.

Politicisation of public entity board appointment processes

The appointment processes for the CFA and MFB Boards lacked transparency and were manipulated to ensure that the appointees would be willing to resolve the respective disputes and follow directions to approve the respective EBAs in a form acceptable to government. The lack of openness and politically driven nature of these appointment processes created perceptions that these entities were being used for political purposes to favour the UFU.

Politicising public entity board appointment processes can negatively impact the honest performance of board appointees' functions and breach public trust, and, consequently, enable, facilitate or result in corrupt conduct.



Recommendations

As a result of Operation Richmond, IBAC has made three recommendations to address key risks identified during the investigation that relate to the conduct of ministers, which increased the likelihood of and their vulnerability to corrupt conduct in the form of improper influence.

- 1) IBAC recommends that the Premier introduces legislation to establish a statement of values for ministers and require the publishing and periodic review of a Ministerial Code of Conduct to be based on the statement of values.
- 2) IBAC recommends that the Premier publish a Ministerial Handbook that brings together existing integrity guidance and policies for ministers and their staff, with new guidance on the operation of the Westminster conventions in a Victorian context (with reference to the New South Wales Ministerial Handbook provisions).
- 3) IBAC recommends that the Secretary of the Department of Premier and Cabinet update training materials for ministers to include new guidance on:
 - navigating relationships with interest groups and lobbyists
 - Westminster principles and conventions.

Operation Richmond discusses other reforms the government could progress to address the corruption risks identified in this investigation. This includes recommendations made to government in IBAC's *Special report on corruption risks associated with donations and lobbying* and *Operation Daintree special report*.

While the government has provided in-principle support for these recommendations, legislative reforms have yet to be introduced.

To read the full special report, visit the IBAC website at www.ibac.vic.gov.au.



Useful resources

Operation Richmond special report

www.ibac.vic.gov.au/operation-richmond-special-report

Operation Daintree special report

www.ibac.vic.gov.au/operation-daintree-special-report

Special report on corruption risks associated with donations and lobbying

www.ibac.vic.gov.au/publications-and-resources/article/corruption-risks-associated-with-donations-and-lobbying

Speak up to stop improper influence

www.ibac.vic.gov.au/speakup

Safely report public sector corruption or police misconduct to IBAC.



Fill out the secure online form at www.ibac.vic.gov.au.



If you have difficulty accessing the online form, call us on **1800 422 284** for further assistance.



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